

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 29, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CORINNA H.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

No. 2:21-CV-00113-JAG

ORDER GRANTING
PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT
AND REMANDING
FOR ADDITIONAL
PROCEEDINGS

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 13, 15. Attorney Maren Ann Miller Bam represents Corinna H. (Plaintiff); Special Assistant United States Attorney Justin Martin represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

I. JURISDICTION

Plaintiff filed an application for Supplemental Security Income on March 6, 2019, alleging disability since September 14, 2017, due to PTSD, headaches, neck

1 pain, shoulder pain, back pain, pain in the right knee, panic attacks, anxiety,
2 depression, hypothyroidism, and early onset COPD. Tr. 135. The application was
3 denied initially and upon reconsideration. Tr. 168-71, 175-77. Administrative
4 Law Judge (ALJ) Marie Palachuk held a hearing on August 25, 2020, Tr. 78-110,
5 and issued an unfavorable decision on September 15, 2020. Tr. 16-29. Plaintiff
6 requested review of the ALJ's decision by the Appeals Council and the Appeals
7 Council denied the request for review on February 5, 2021. Tr. 1-6. The ALJ's
8 September 2020 decision is the final decision of the Commissioner, which is
9 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this
10 action for judicial review on March 16, 2021. ECF No. 1.

11 **II. STATEMENT OF FACTS**

12 Plaintiff was born in 1963 and was 56 years old when she filed her
13 application. Tr. 27. She has a GED and a sporadic work history, having worked
14 many short-term jobs over her life, but has not worked in any substantial capacity
15 in the past 15 years. Tr. 470, 602. She has suffered complex trauma, beginning in
16 childhood, and extending through abusive adult relationships and periods of
17 homelessness. Tr. 410. Her trauma was untreated until she began therapy in late
18 2017. Tr. 411.

19 **III. STANDARD OF REVIEW**

20 The ALJ is responsible for determining credibility, resolving conflicts in
21 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
22 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
23 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
24 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
25 only if it is not supported by substantial evidence or if it is based on legal error.
26 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
27 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
28

1 1098. Put another way, substantial evidence is such relevant evidence as a
2 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
3 *Perales*, 402 U.S. 389, 401 (1971).

4 If the evidence is susceptible to more than one rational interpretation, the
5 Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at
6 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir.
7 1999). If substantial evidence supports the administrative findings, or if
8 conflicting evidence supports a finding of either disability or non-disability, the
9 ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230
10 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be
11 set aside if the proper legal standards were not applied in weighing the evidence
12 and making the decision. *Browner v. Secretary of Health and Human Services*,
13 839 F.2d 432, 433 (9th Cir. 1988).

14 IV. SEQUENTIAL EVALUATION PROCESS

15 The Commissioner has established a five-step sequential evaluation process
16 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*
17 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant
18 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d
19 at 1098-1099. This burden is met once a claimant establishes that a physical or
20 mental impairment prevents the claimant from engaging in past relevant work. 20
21 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ
22 proceeds to step five, and the burden shifts to the Commissioner to show: (1) the
23 claimant can make an adjustment to other work; and (2) the claimant can perform
24 specific jobs that exist in the national economy. *Batson v. Commissioner of Social*
25 *Sec. Admin.*, 359 F.3d 1190, 1193-1194 (9th Cir. 2004). If a claimant cannot make
26 an adjustment to other work in the national economy, the claimant will be found
27 disabled. 20 C.F.R. § 416.920(a)(4)(v).
28

V. ADMINISTRATIVE FINDINGS

On September 15, 2020, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act. Tr. 16-29.

At *step one*, the ALJ found Plaintiff had not engaged in substantial gainful activity since the application date. Tr. 19.

At *step two*, the ALJ determined Plaintiff had the following severe impairments: mild asthma/emphysema with continued smoking, unspecified personality disorder, cannabis use disorder, and unspecified anxiety disorder. *Id.*

At *step three*, the ALJ found Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. Tr. 20-21.

The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found she could perform work at all exertional levels, with the following non-exertional limitations:

She must avoid even moderate exposure to respiratory irritants.
She would need low stress work (i.e., predictable environment with seldom change, no judgment/decision making, no fast paced production rate of pace, no managerial work, no public).

Tr. 21.

At *step four*, the ALJ found Plaintiff had no past relevant work. Tr. 27.

At *step five* the ALJ found that, considering Plaintiff's age, education, work experience and residual functional capacity, Plaintiff could perform jobs that existed in significant numbers in the national economy, specifically identifying the representative occupations of kitchen helper, stores laborer, and routing clerk.

Tr. 28.

The ALJ thus concluded Plaintiff was not under a disability within the meaning of the Social Security Act at any time from the date the application was filed through the date of the decision. Tr. 28-29.

VI. ISSUES

The question presented is whether substantial evidence supports the ALJ's decision denying benefits and, if so, whether that decision is based on proper legal standards.

Plaintiff contends the Commissioner erred by: (1) improperly evaluating the medical opinion from Plaintiff's treating therapist; and (2) improperly evaluating Plaintiff's subjective complaints.

VII. DISCUSSION

A. Medical Opinion Evidence.

Plaintiff argues the ALJ improperly weighed the opinion from her treating therapist, Ms. Alison McKenna, LCSW. ECF No. 13 at 8-17.

For claims filed on or after March 27, 2017, the ALJ considers the persuasiveness of each medical opinion and prior administrative medical finding, regardless of whether the medical source is an Acceptable Medical Source. 20 C.F.R. § 416.920c(c). The ALJ is required to consider multiple factors, including supportability, consistency, the source's relationship with the claimant, any specialization of the source, and other factors (such as the source's familiarity with other evidence in the file or an understanding of Social Security's disability program). *Id.* The regulations make clear that the supportability and consistency of the opinion are the most important factors, and the ALJ must articulate how they considered those factors in determining the persuasiveness of each medical opinion or prior administrative medical finding. 20 C.F.R. § 416.920c(b). The ALJ may explain how they considered the other factors, but is not required to do so, except in cases where two or more opinions are equally well-supported and consistent with the record. *Id.*

Supportability and consistency are further explained in the regulations:

1 (1) Supportability. The more relevant the objective medical
2 evidence and supporting explanations presented by a medical
3 source are to support his or her medical opinion(s) or prior
4 administrative medical finding(s), the more persuasive the
5 medical opinions or prior administrative medical finding(s) will
6 be.

7 (2) Consistency. The more consistent a medical opinion(s) or
8 prior administrative medical finding(s) is with the evidence from
9 other medical sources and nonmedical sources in the claim, the
10 more persuasive the medical opinion(s) or prior administrative
11 medical finding(s) will be.

12 20 C.F.R. § 416.920c(c). The Ninth Circuit has additionally held that the new
13 regulatory framework displaces the longstanding case law requiring an ALJ to
14 provide “specific and legitimate” or “clear and convincing” reasons for rejecting a
15 treating or examining doctor’s opinion. *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir.
16 2022).

17 Plaintiff’s treating therapist, Ms. McKenna, provided a number of
18 summaries of Plaintiff’s treatment throughout the record, noting that Plaintiff did
19 not appear capable of maintaining employment due to her social limitations and
20 that her PTSD symptoms prevented her from meeting the expectations of
21 employers. Tr. 421, 452-53, 457-60. She also completed a mental RFC
22 assessment in July 2020, in which she opined Plaintiff had moderate and marked
23 limitations in nearly all areas of work-related functioning, and described further
24 deficits in understanding, memory, concentration, social functioning, and
25 adaptation skills. Tr. 620-22.

26 The ALJ found Ms. McKenna’s statements unpersuasive. Tr. 27. She found
27 that the conclusory statements about Plaintiff being incapable of working were not
28 valuable or persuasive, as they related to an issue reserved to the Commissioner.
Id. She further found the assessed moderate and marked limitations in the RFC

1 assessment were unsupported by chart notes reflecting Plaintiff's significant gains
2 in insight and emotional regulation, and found the marked limitations to be
3 inconsistent with Plaintiff's ability to secure housing, resolve traffic violations,
4 obtain her driver's license, and interact appropriately with medical providers. *Id.*

5 Plaintiff argues the ALJ erred in rejecting the assessed mental limitations, as
6 the discussion was insufficiently specific and disregarded the broader context of
7 the treatment records. ECF No. 13 at 8-17.¹ Specifically, she asserts the record
8 does not document any sustained significant improvement in her functional
9 abilities, and argues that the abilities identified by the ALJ are not inconsistent
10 with Ms. McKenna's opinion and were more complicated than the ALJ indicated.
11 *Id.* Defendant argues the ALJ reasonably considered the supportability and
12 consistency of Ms. McKenna's opinion and reasonably interpreted the record as
13 showing improvement and activities that were inconsistent with the opinion. ECF
14 No. 15 at 3-9.

15 The Court finds the ALJ's discussion is not supported by substantial
16 evidence. While the consistency of an opinion with the medical evidence is
17 certainly a relevant factor, the analysis must consider the entire record as a whole
18 and courts may not affirm simply by isolating a "specific quantum of supporting
19 evidence." *Hill v. Astrue*, 695 F.3d 1153, 1159 (9th Cir. 2012). The ALJ's
20 conclusion that Ms. McKenna's opinion was not supported by chart notes
21 reflecting "significant gains in insight and emotional regulation" is not supported
22 by substantial evidence.
23

24 While the treatment notes do reflect Plaintiff's improved understanding and
25 insight into her condition, there is little evidence of sustained functional
26

27 ¹ Plaintiff does not challenge the ALJ's rejection of Ms. McKenna's general
28 statements that Plaintiff was unable to work.

1 improvement in emotional regulation or in her ability to translate her insights into
2 practice. Tr. 595, 601, 606-07, 615. In March 2019, Ms. McKenna noted
3 Plaintiff's level of functioning seemed to have improved with respect to
4 interpersonal relationships since beginning treatment (Tr. 410), but records
5 throughout the following year document instances of irritability with family and
6 friends, angry outbursts with little provocation, an inability to take responsibility
7 for her behaviors, and perseverating on what others could have done differently.
8 Tr. 597-99, 601-02, 607-08. Even in the months leading up to the hearing, Ms.
9 McKenna's treatment notes reflect Plaintiff's ongoing emotional reactions
10 (particularly to stressors), difficulties managing interpersonal relationships, and an
11 inability to set realistic goals or make plans on her own or recognize self-
12 destructive behaviors. Tr. 605-19. The ALJ's discussion does not explain how
13 Ms. McKenna's notes as a whole indicate improvement to the point of
14 contradicting her opinion. The Court finds the ALJ's analysis is not supported by
15 substantial evidence.

16 Furthermore, in determining the supportability of a medical opinion, an ALJ
17 is supposed to consider the supporting explanations provided by a medical source.
18 20 C.F.R. § 416.920c(c)(1). Ms. McKenna provided an extensive discussion
19 following the check-box opinions, explaining many of the ratings and laying out
20 specific examples of Plaintiff's ongoing symptoms. Tr. 622. The ALJ did not
21 acknowledge or discuss this supporting explanation. Tr. 27.

22 With respect to consistency with other evidence, the ALJ found that Ms.
23 McKenna's opinion was contradicted by Plaintiff's demonstrated ability to secure
24 housing, resolve traffic violations, obtain her driver's license, and interact
25 appropriately with medical providers. Tr. 27. The context of the treatment records
26 documenting these events does not indicate any substantial abilities that contradict
27 Ms. McKenna's opinion. For example, Plaintiff's move and obtaining of new
28

1 housing in the summer of 2019 was one of the most fraught events documented in
2 the record: she demonstrated extreme anxiety, perseverated on the possibility of
3 becoming homeless, was substantially triggered by the idea of living in a friend's
4 trailer, and engaged in self-sabotaging behaviors that confused her providers due to
5 undisclosed trauma. Tr. 590-95. She left her traffic violations unresolved for
6 many years and seemed to be minimizing the potential consequences leading up to
7 her court date, and Ms. McKenna noted that it was unclear why it took Plaintiff so
8 long to obtain her driver's license. Tr. 433-36, 459. Finally, a claimant's ability to
9 interact with care providers in the limited context of receiving treatment
10 (particularly mental health treatment) is not indicative of their ability to maintain
11 ongoing relationships in their personal life or in a professional work setting. The
12 Court finds the ALJ's discussion is not supported by substantial evidence.

13 On remand, the ALJ will reconsider Ms. McKenna's opinion.

14 **B. Plaintiff's Subjective Statements.**

15 Plaintiff contends the ALJ erred by improperly rejecting her subjective
16 complaints. ECF No. 13 at 17-21. It is the province of the ALJ to make
17 determinations regarding a claimant's subjective statements. *Andrews v. Shalala*,
18 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's findings, however, must be
19 supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231
20 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying
21 medical impairment, the ALJ may not discredit testimony as to the severity of an
22 impairment merely because it is unsupported by medical evidence. *Reddick v.*
23 *Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of
24 malingering, the ALJ's reasons for rejecting the claimant's testimony must be
25 "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir.
26 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "General findings are
27 insufficient: rather the ALJ must identify what testimony is not credible and what
28

1 evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*
2 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

3 The ALJ concluded Plaintiff's medically determinable impairments could
4 reasonably be expected to cause the alleged symptoms; however, Plaintiff's
5 statements concerning the intensity, persistence and limiting effects of those
6 symptoms were not entirely consistent with the medical evidence and other
7 evidence in the record. Tr. 23. The ALJ found Plaintiff's complaints were not
8 fully supported by objective evidence, and that the therapy records demonstrated
9 improvement in her mental health functioning, her activities demonstrated a good
10 ability to adapt and manage herself, she was able to interact appropriately with care
11 providers, and her limited work history indicated that her present unemployment
12 was likely related to other long-standing reasons such as a lack of motivation.
13 Tr. 24-25.

14 Plaintiff argues the ALJ's rationale is insufficient, as the record did not
15 support a finding of any significant sustained improvement, and her activities were
16 not inconsistent with her reports. ECF No. 13 at 19-20. She further argues that the
17 ALJ's speculation regarding the reasons for Plaintiff's unemployment did not
18 constitute substantial evidence, and the general summary of her treatment and the
19 objective evidence was insufficient on its own. *Id.* at 18-20. Defendant argues the
20 ALJ reasonably interpreted the record in discounting Plaintiff's reports based on
21 evidence of improvement, her activity level, her poor work history, and the lack of
22 support from the objective records. ECF No. 15 at 10-14.

24 The Court finds the ALJ failed to offer clear and convincing reasons for
25 discounting Plaintiff's reports. Evidence of medical treatment successfully
26 relieving symptoms can undermine a claim of disability. *Wellington v. Berryhill*,
27 878 F.3d 867, 876 (9th Cir. 2017). Improvement in symptoms, however, does not
28 mean elimination of symptoms. Furthermore, the Ninth Circuit has held that:

1 [i]t is error to reject a claimant's testimony merely because
2 symptoms wax and wane in the course of treatment. Cycles of
3 improvement and debilitating symptoms are a common
4 occurrence, and in such circumstances it is error for an ALJ to
5 pick out a few isolated instances of improvement over a period
of months or years and to treat them as a basis for concluding a
claimant is capable of working.

6 *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir. 2014). As discussed above, the
7 record does not support the ALJ's finding of substantial improvement in Plaintiff's
8 mental health conditions, as she continued to struggle with emotional
9 dysregulation, interpersonal relationships, and hypervigilance and arousal from
10 past trauma. The Court finds the ALJ's conclusion is not supported by substantial
11 evidence.

12 A claimant's daily activities may support an adverse credibility finding if the
13 claimant's activities contradict their other testimony. *Orn v. Astrue*, 495 F.3d 625,
14 639 (9th Cir. 2007). The Ninth Circuit, however, has repeatedly noted that many
15 everyday activities are not inconsistent with a claim of disability:

16 We have repeatedly warned that ALJs must be especially
17 cautious in concluding that daily activities are inconsistent with
18 testimony about pain, because impairments that would
19 unquestionably preclude work and all the pressures of a
20 workplace environment will often be consistent with doing more
than merely resting in bed all day.

21 *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014) *citing* *Smolen v. Chater*, 80
22 F.3d 1273, 1287 n.7 (9th Cir. 1996) ("The Social Security Act does not require that
23 claimants be utterly incapacitated to be eligible for benefits, and many home
24 activities may not be easily transferable to a work environment where it might be
25 impossible to rest periodically or take medication." (citation omitted)); *Fair*, 885
26 F.2d at 603 ("[M]any home activities are not easily transferable to what may be the
27 more grueling environment of the workplace, where it might be impossible to
28 periodically rest or take medication."). The ALJ noted Plaintiff's activities

1 indicated a good ability to adapt and manage herself. Tr. 25. The ALJ, however,
2 did not explain how any of the identified activities were inconsistent with
3 Plaintiff's allegations. Plaintiff's ability to tend to her personal and household care
4 are not inconsistent with her allegations regarding social difficulties in the
5 workplace and trouble concentrating or consistently attending work. Therefore,
6 the ALJ's finding that Plaintiff's allegations were inconsistent with her activities is
7 not supported by substantial evidence.

8 While an ALJ may consider a claimant's work history in assessing the
9 reliability of their claims, *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001),
10 *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002), the ALJ here stated only
11 that it was "likely" that Plaintiff's lack of work was related to other reasons, such
12 as lack of motivation, and did not cite to any evidence in support of that
13 supposition. On the contrary, the record shows Plaintiff has had a series of low
14 paying or part time jobs throughout her life, consistent with her reports to
15 providers that she has had many jobs but has rarely been able to sustain work for
16 long. Tr. 91-92, 304-06, 470, 602. Given the long-standing nature of Plaintiff's
17 complex trauma, the Court finds the ALJ's speculation does not constitute
18 substantial evidence.

19 The only other rationale offered by the ALJ was the lack of support from the
20 objective testing. An ALJ may cite inconsistencies between a claimant's testimony
21 and the objective medical evidence in discounting the claimant's symptom
22 statements. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir.
23 2009). This cannot be the only reason provided by the ALJ, however. *See Lester*,
24 81 F.3d at 834 (the ALJ may not discredit the claimant's testimony as to subjective
25 symptoms merely because they are unsupported by objective evidence).
26

27 On remand, the ALJ shall reconsider Plaintiff's subjective testimony,
28 considering the record as a whole and the context of various notations.

VIII. CONCLUSION

The ALJ's decision is not supported by substantial evidence. On remand, the ALJ shall reevaluate Plaintiff's subjective statements and the medical evidence of record, making findings on each of the five steps of the sequential evaluation process, and taking into consideration any other evidence submitted or arguments relevant to Plaintiff's disability claim.

Accordingly, **IT IS ORDERED:**

1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **GRANTED**.

2. Defendant's Motion for Summary Judgment, **ECF No. 15**, is **DENIED**.

3. The matter is **REMANDED** to the Commissioner for additional proceedings consistent with this Order.

4. An application for attorney fees may be filed by separate motion.

5. The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and the file shall be **CLOSED**.

IT IS SO ORDERED.

DATED March 29, 2023.




JAMES A. GOETKE
UNITED STATES MAGISTRATE JUDGE